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FUTURE INTERESTS IN PERSONAL PROPERTY.

SOME time ago, a student at the Harvard Law School came to me with a question which was puzzling him. We had a long talk, in which many diversities were taken and points resolved, but the substance of the discussion can be put into the form of a short Socratic dialogue in which I do not play the part of Socrates.

S. If a silver cup is bequeathed to a man for his life, and on his death to a college, you say, do you not, that the man has the absolute property, and that the college has not an interest in the nature of a vested remainder, but has an executory interest.

G. That is what I say.

S. Suppose the testator bequeaths the cup to his son for life, and on his death to the son's oldest son for life, and then to the college, and that the testator's son is never married, is the gift to the college too remote ?

G. No, it is not too remote.

S. But if it is executory, as you say it is, surely it is too remote.

G. It is, indeed, on the one hand, executory, but on the other hand it is to be considered, on a question of remoteness, as if it were a devise of land, and, if it were land, the gift to the college would be vested and therefore not too remote. You will find the authorities in § 117 of my book against Perpetuities.

S. Let me put another case: Suppose I give a cup to a man to hold during his life, and I say nothing as to what is to happen on his death, where does the cup go on his death?

G. Surely it comes back to you, or, if you are dead, then to your executor.

S. How can that be? The man, you say, has the absolute property; there is no gift away from him. Why does not the cup go to his executor?

G. In Delaware, indeed, it does; but in the rest of the common law world it comes back to you, as I have said.

S. For most purposes it is all the same whether a future interest in personalty is vested or executory, is it not?

G. That is true.

S. I have suggested two classes of cases in which it is important whether you consider a future interest in a chattel to be vested or executory. Do you know of any other?

G. I do not at present think of any other classes of cases.

S. Nor do I think of any other. This is, then, what you do: You say that future interests in chattels are executory, and yet in the only cases in which it is of any consequence whether they are vested or executory, you treat them as vested.

G. It would seem that that is what I do.

S. But, by the shade of that great man, Mr. Pooley, that is strange.

G. It is indeed strange.

S. Why do you act thus?

G. It is desirable that future interests in personalty should be considered vested for several reasons. *First* —

S. Pardon me, but I do not deny that future interests in personalty should be treated as vested, — that, indeed, is excellent, — but why, if you always treat them as if they were vested, do you persist in calling them executory?

G. Because Lord Coke, and Mr. Preston, and Mr. Joshua Williams say I must. We should revere the gods.

This conclusion was not satisfactory, I fancy, to my interlocutor; it certainly was not to me. But the conversation set me a thinking on the true nature of future interests in personalty.

Lord Coke, in Lampet's Case,[1] says: "This case of a devise of

[1] 10 Co. 46 b, 47 a.

a lease for years to one for life, and after his death to another during the residue of the term, hath produced *septem quæstiones vexatas et spinosas.*" The case of a like bequest of a chattel personal has added to the difficulty of these questions; they have never been satisfactorily solved, nor does such solution seem possible until a clear conception is formed of the nature of future interests in personalty. This conception has hitherto been absent in the law. The following essay is offered, with great diffidence, as an attempt to aid in supplying the want.

Property is a right *in rem* (or against all the world) which gives to the owner of the right an indefinite (though not necessarily an unrestricted) power of user over a thing, as opposed to a right *in aliena re*, such as an easement or *servitus*, which gives the person having the right a certain definite power of user over a thing in which another has the property.

FUTURE INTERESTS IN REAL ESTATE.

Property may be of either limited or unlimited duration. At least, this is the doctrine of common law with regard to land. Property in land is called an estate. It may either be a right which on the owner's death passes to successors, determined by certain rules indefinitely — that is, without defined limit — as an estate in fee-simple or in fee-tail; or it may be a right for a period which must come to an end, although the time at which it will determine is uncertain — as an estate for life; or it may be a right for a period which has a termination certain, — as an estate for years.

Estates are either present or future.

Future estates are either vested or executory.

I. A vested future estate is one which is prevented from coming into possession only by the existence of some previous estate or estates; it is an estate which is ready to come into possession in whatever way and at whatever time the preceding estate or estates determine. For instance, if land is devised to A for life, and subject to A's life estate, to B and his heirs, B has a vested estate. These estates are reversions or vested remainders.

II. An executory estate is one which will not become a present estate until something, other than the termination of a previous estate or estates, occurs.

This something may be an event certain or uncertain.

A. If it is a certain event,

(1) It may be one which will happen at a time certain.

Thus, a devise of land to A to hold from the first day of January after the testator's death creates an executory estate of this first sort.

Or (2) It may be an event which will certainly happen, but of which the time of happening is uncertain.

Thus, a devise of land to B from and after the death of A (A not taking a life interest) creates an executory estate of this second kind.

B. If it is an uncertain event.

Then the estate is a contingent one.

(1) It may be one which must come into possession, if at all, on the termination of a preceding estate or estates as originally limited. Estates of this first kind are contingent remainders.

Thus, upon a devise of land to A for life, and if A die unmarried then to B and his heirs, B has a contingent remainder.

Or (2) It may be an estate which may come into possession at a time other than the termination of the preceding estate or estates as originally limited.

Thus, upon a devise of land to A and his heirs, but if A die unmarried to B and his heirs, B has an executory interest of this second kind.

Estates of all the above kinds can be created in land at the present day, but originally this was not so.

Owing to familiar doctrines of the feudal law, into which it is unnecessary here to go, the only future estates of realty which the law originally allowed were estates which fitted on to previous estates, without cutting them short, or leaving a gap. These estates were called reversions or remainders, and they came into possession either whenever and however the previous estates determined, in which case they were reversions or vested remainders (I. *ante*), or else they came into possession immediately upon the determination of the previous estates as originally limited, if some event (other than the determination of the preceding estates) had or had not happened. In this case they were called contingent remainders. Of such cases, II. B. (1) is the type.

The other kinds of executory estates were brought in by the Statute of Uses and the Statutes of Wills, and are represented by II. A (1) and (2) and II. B (2); they had various names — springing uses, shifting uses, executory devises, conditional limitations.

It will be noticed that contingent remainders are here classed

among Executory Estates, as opposed to Vested Estates; this is a convenient classification, and there does not seem any good term other than "Executory Estates" to express the opposite of Vested Estates. But, to prevent confusion, it must be borne in mind that contingent remainders are often excluded from the definition of executory estates, and a distinction made between remainders, vested and contingent, on the one hand, and executory estates on the other, a remainder being an interest which will come into possession, if it comes at all, on the termination of some estate as originally limited. That is, Vested Estates are opposed to Executory Estates in the larger sense, which consist of Contingent Remainders and of Executory Estates in the narrower sense.

FUTURE INTERESTS IN PERSONALTY.

There is no reason in the nature of things why the law should not allow the same future interests in personalty as are allowed in realty. There are no feudal doctrines to limit their creation, and they are not dependent on any statutes abrogating those doctrines.

We shall see, however, that this has not always been supposed to be the case.

Personal property is of two kinds, chattels real and chattels personal. When future interests in personal property have been in discussion, mistakes have, I think, occurred from the two kinds of chattels being confused.

CHATTELS REAL — ESTATES FOR YEARS.

Estates in land which have a termination certain, or estates for years, are not deemed in the Common Law realty, but personalty; if the owner dies before the years have run out, the estate goes not to his heirs, but to his executors.[1]

Such an estate is a chattel real, and there may be estates or interests in it. Let us take the interests in realty and see how far they can be applied to chattels real. These interests are of three kinds: (I.) Rights passing on death to successors; (II.) Rights which determine at a fixed time, estates for years; (III.) Rights which must determine, but whose time of termination is uncertain, estates for life.

Rights passing on death to successors. In the earliest times, estates for years might be made transmissible to heirs,[2] but for centuries the only successors on death that the Common Law

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[1] See 2 Poll. & M. Hist. Eng. Law (2d ed.), 110–117.

[2] See Ib. 115.

has allowed in chattels real have been executors or administrators, and therefore a lease for years to A and his heirs, or to A and the heirs of his body, is regarded as an inexact but successful attempt to give an estate for years to A and his executors and administrators.[1]

Taking up (II.) estates for years, we find that such estates in the form of sub-leases have been allowed from an early date[2] down to the present day without question; and that upon such a sub-lease the reversion remains in the owner of the chattel real and is a vested interest.

Coming now to (III.) estates for life, we find it laid down that there can be no such thing in a chattel real; that if a term for years is granted to A for life, A takes the absolute interest; and that upon A's death the term goes to A's executors and administrators, and does not revert to the grantor. Why is this? It is not because you cannot have a particular estate in a chattel real, for we have seen that you can have in a chattel real an estate for years and a vested reversion.

The reason why there could be no estate or interest for life in a chattel real was the technical one that in the eye of the law a life estate was greater than an estate for years; and therefore as a term for years, even for a thousand years, would merge in a life estate, so a grant of a term for years to one for his life purported to carry something which was greater than a term for years and which carried merely a term for years only because that was all there was to carry, and did carry the whole term.

Thus in Welcden *v.* Elkington:[3] —

"If one who has a term for years grants it to another during his life, it is as much as if he had granted it during all the years, for the limitation for life is as great as a limitation for all the years and comprehends in judgment of law all the years, for inasmuch as a time for life is greater than a time for years, therefore the lesser is included in the greater."

So in Woodcock *v.* Woodcock, per Walmsley, J.:[4] —

"The law will not presume that there should be a continuance of the term after the death of the daughter."

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[1] Lit. § 740; Co. Lit. 388 a.

[2] 2 P. & M. Hist. Eng. Law, 112.

Lord Mansfield's statement in Wright *d.* Plowden *v.* Cartwright, 1 Burr. 282, 284, that according to the old cases "the gift of a term (like any other chattel) for an hour, was good forever," appears to be grounded on the mistake nanalogy of a chattel personal. On the gift of a chattel personal for an hour *vide infra*.

[3] Plowd. 519, 520.

[4] Cro. El. 795. See Chalfont *v.* Okes, 1 Ch. Cas. 239; Jermyn *v.* Orchard, Show. P. C. 199.

So, although a term for years may be assigned to have and to hold from and after a future time,[1] yet such a grant to take effect after the death of the termor was said to be bad because the law presumed that the termor would live longer than the term.

"And hereupon Popham said it had been held, that if one has a lease for years of land and grants to another all the term which should be to come at the time of his death, this grant is void, for in that he will hold the term during his own life, thereby he holds it for a time, which is as long as he has an interest in the land, so that there is no certainty that the term will ever commence, and therefore the grant so made is void. And the Lord Dyer in his argument afterwards affirmed that such grant could not be good to commence after the death of him who had the term; but he said that in a case which lately came before the justices of the King's Bench upon a *postea*, where lessee for years granted by deed all his term to another, *habendum* to the grantee from the time of the death of the grantor, it was adjudged that the *habendum* was void and that the term passed presently, because the premises of the deed and the *habendum* could not stand together; for by the premises of the deed the term was granted presently, and then the *habendum*, which would make the term commence after death, was inconsistent with the premises, and could not make any interest to pass, because the time when it should pass was thereby made uncertain; for by the *habendum* the grantor intended to reserve to himself the estate or interest as long as he should live, and that the years which were to come after his death should pass, which could not be, because, when he reserved it for his life, therein he reserved it for all the term which he had, for a time for life is greater than a time for years; and therefore, inasmuch as the *habendum* and the premises could not stand together, the court adjudged that the term passed by the premises of the deed, rather than the *habendum* should destroy the whole. But in the other case, where lessee for years, without any *habendum*, grants to another all his term which shall be to come at the time of his death, the whole shall be totally void, because it is but one entire sentence."[2]

But in Rayman *v.* Gold,[3] it was said that a man could either demise or devise a term to have and to hold after the death of a stranger who took no interest in the estate.

The difference between the two cases is this: In the first case there was created, by way of reservation, an estate for life in the termor; and as, by the presumption of law, an estate for life cannot be less than an estate for years, the whole interest passed to

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[1] Per Anderson, J., *arguendo*, in Welcden *v.* Elkington, Plowd. 519, 524.

[2] Welcden *v.* Elkington, Plowd, 519, 520. See Anon., 1 And. 122.

[3] Moore, 635.

the termor; but in the second case, although by presumption of law a life estate is greater than an estate for years, yet there is no presumption that a certain man might not die within a term, and therefore in the second case the demise or devise was good. Mr. Preston seems to have overlooked this distinction.[1]

So far as transfers *inter vivos* are concerned, the law of England has remained in this condition down to the present day. The only thing to the contrary is the ambiguous remark in Butt's Case:[2] "So if the lessee for years grants the carve of land to another for the term of his life, he hath the whole term if he live so long, as well as in the case of a devise."[3]

But from an early period, upon the devise of a term to one for life, and upon his death to B, the devise to B was held good. The first suggestion that this might be done was in 1535;[4] but the point was first distinctly held in Welcden *v.* Elkington.[5] This decision was, upon the whole, followed, but there were judgments and *dicta* the other way, notably in Woodcock *v.* Woodcock,[6] until in Manning's Case,[7] and Lampet's Case,[8] the validity of such devises over was settled.

The series of cases will be found in Gray, Rule against Perpetuities, §§ 149–152.[9]

What was the theory upon which the court went in allowing these future devises of estates for years?

It was at first suggested that there might be a difference between those cases where the term itself was given for life, and those cases where the use and occupation of the term were given, but this distinction was emphatically negatived in Manning's Case.

The theory adopted seems to have been this: To carry out the intention of the testator, the apparent order of the limitations was reversed. If a term was devised to A for life, and on A's death to B, this was considered as, first, a gift of the term to B after the death of A (which, as we have seen, is good), and then a gift of what remained to A; that is, B had an executory devise and A the whole estate, subject to the executory devise.

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[1] 2 Prest. Abs. 6, 144; and *cf.* Lewis, Perp. 93, 94.

[2] 7 Co. 23 a.

[3] "When they [future limitations of terms] came to be allowed, by will, or by declaration of trust, the *substantial reason* was the same for allowing them by *deed*." Per Lord Mansfield, C. J., in Wright *v.* Cartwright, 1 Burr. 282; and, as in that case, the courts have been astute to construe deeds so as to avoid the application of the doctrine.

[4] Anon., Dyer, 7 a.

[5] Plowd. 519; Dyer, 358 b.

[6] Cro. El. 795.

[7] 8 Co. 94 b.

[8] 10 Co. 46 b.

[9] *Cf.* 2 Harg. Jurid. Arg. 41, 42.

"And inasmuch as the intent of the testator is evident by these words, it is the office of the court, as Anderson and Manwood said (and as Mounson, Justice, also afterwards said to me) so to marshal and construe the words that the intent may take place and the end be effected and not destroyed, if any sense at all can be made of them by law. Then here it appears to the court that the lease was made for sixty years from the feast of the Annunciation of our Lady *in anno* 35 H. 8, so that the lease would end in the year of our Lord 1604. And it was the will of the testator that his wife should have the land for so many of the years as she should live and no longer, and that his son should have the residue. Then, in order to set the estates devised in a clear light, and to make them stand with the law, suppose that the estate limited to the son had been first expressed, and the wife's estate last, as if he had devised that the son should have the land from the death of his wife unto the end of the term, or unto the Annunciation of our Lady in the year of our Lord 1604, and suppose further that he had devised the land to his wife during her life, would not this form of words have served the turn of both the wife and the son? And would not the law have warranted every part of this devise? Most certainly it would. And, Sir, so much is done in the present devise of the testator, for his devise is in substance to that purpose, and his words amount to as much. And it is the office of the court to adjudge what part of the sentence precedes and what follows, and they ought so to place them that the one part may not destroy the other, but that each may stand together. . . .

"Wherefore, inasmuch as the intent is the principal point to be considered in wills, and the words ought to be construed and applied so as to perform that intent, it is reasonable, and the office of the judges, to make such exposition of the words in the present case as is agreeable to the intent of the testator and consistent with the law of the realm, and that is, to construe the latter devise to the son to precede the former devise to the wife, which exposition is consonant to law and equity."[1]

"So in the case at bar, when the wife dies it shall vest in Matthew Manning as by an executory devise, as if he had devised that after a son has paid such a sum to his executors, that he shall have his term, or that after the death of A that B shall have the term, or that after his son shall return from beyond the seas, or that A dies, that he shall have it, in all these cases and other like, upon the condition or contingent performed the devise is good, and in the mean time the testator may dispose of it; and therefore in judgment of law *ut res magis valeat*, the executory devise shall precede, and the disposition of the lease till the contingent happen shall be subsequent, as in the case at bar it was, and so all shall well stand together; for when he made the executory devise he had a lawful power, and might well make it, and afterwards in the same will he

[1] Welcden *v.* Elkington, Plowd. 522.

had lawful power and might well devise the lease till the contingent happened, and therefore it is as much as if the testator had devised that if his wife died within the term that then Matthew Manning should have the residue of the term, and farther devised it to his wife for her life." [1]

As we shall see, in the United States, future limitations of chattels personal can generally be created by deed as well as by will, and it seems probable that the same extensions would be allowed with chattels real. But there is no decision precisely in point, although in Maryland it has been held in two cases that future limitations of leaseholds renewable forever are good; [2] and in the latter case the general question is discussed, and the conclusion reached that future limitations of ordinary terms for years can be created in this country as well by deed as by devise.

Assuming, then, that if, in England by will, and in the United States by deed or will, a chattel real is given to A for life, and on his death to B, B takes a good legal estate; what is its character? Is it in the nature of a vested remainder of realty after a life estate, or is it in the nature of an executory devise after an absolute interest? We have seen that the latter is the theory of Manning's case, and the older authorities. For most purposes this question is of no importance. B has a good legal interest, and that is enough; but there are two classes of cases where the question becomes a serious one.

First. Suppose a term is devised to A, who is now a bachelor, for life, on his death to A's eldest son for life, and on the death of such eldest son to A's other children absolutely. Here, had the subject of the devise been a fee instead of a chattel real, the gift to A's eldest son for life and the gifts in remainder to A's other children would all have vested in the lifetime of A, and so none of them would have been bad for remoteness. If, therefore, upon this devise of a term the estates for life are really life estates, then the final limitation to A's younger children is vested and good. But if what purport to be life estates in the term are really absolute interests, then the final limitation is an executory devise, which does not vest until it comes into possession, and is therefore too remote.

Second. Suppose a term is devised to A for life, and there is no devise over. If A's estate is really a life estate, then there is a reversion in the executor of the testator, and upon A's death the term passes to such executor; but if A's estate is really absolute,

[1] Manning's Case, 8 Co. 95 a. See Fearne, C. R. 402, 403; Lewis, Perp. 87.

[2] Arthur *v.* Cole, 56 Md. 100; Culbreth *v.* Smith, 69 Md. 450.

then, as there is no gift over, the term, upon A's death, will pass to A's executor.

The theory of the old cases, based on the doctrine that there can be no life estate in a term, would require us to hold, in the first case, that the devise to A's younger children was too remote, and, in the second case, that the term would pass to A's executor and not to the executor of the testator. I am not aware that the first of these questions has actually arisen either in this country or in England. The second question has arisen in one case, Eyres *v.* Faulkland,[1] and in this, contrary to what theory seems to demand, there was held to be a reversion to the executor of the testator. Whether it is worth while to preserve this doctrine will be considered after dealing with the law as to future limitations of chattels personal.

CHATTELS PERSONAL.

The early law of chattels personal, and particularly the question when and how far property was recognized in them apart from possession, has been discussed by Professor Maitland and Professor Ames in their invaluable articles on the seisin and disseisin of chattels.[2] I shall not wander into this attractive field, but start with the fifteenth century. I suppose it will be generally conceded that at that time the ideas of possession and of property were so far distinguished that the owner of goods who had bailed them to A would be considered as still having the property in them, although they were in A's possession.

There was no tenure, and there were no estates, in chattels personal; absolute property was the only kind of property recognized. In Bro. Ab. Devise, 13, it is said, "gift or devise of a chattel for an hour is forever."

Professor Ames has some interesting remarks on this point: —

"If a chattel, real or personal, was granted or bequeathed to one for life, the grantee or legatee became not only tenant for life, but absolute owner of it. In other words, there could be no reversion or remainder in a chattel. Possibly others may have been as much perplexed as the present writer in seeking for the reason of this rule. The explanation is, however, simple. The common-law procedure, established when such limitations of chattels were either unknown or extremely rare, gave the reversioner and remainder-man no remedy against the life tenant. There was no action for chattels corresponding to the formedon in reverter and remainder for land. Detinue would, of course, lie in general on a contract of bailment; but the contract of bailment, like a contract for

[1] 1 Salk 231. [2] 1 Law Qu. Rev. 324; 3 HARV. LAW REV. 23, 313, 337.

the payment of money, must be conceivably performable by the obligor himself, and therefore before his death; he could not create a duty binding only his executor. Consequently, there being no right of action against him, the life tenant's power of enjoyment was unrestricted. His ownership was necessarily absolute." [1]

There are three difficulties in accepting this explanation.

First. It does not meet the case just cited of the gift of a chattel for an hour; a contract of bailment for an hour is performable by the obligor.

Second. By the end of the fourteenth century, detinue could be maintained for a wrongful detention apart from contract.

Third. In 1459 [2] a bailment for life was recognized as valid.

The reason why a gift of a chattel for an hour carried the absolute property was, it is submitted, that, executory interests not yet having been conceived of, property carried with it the absolute indefeasable power of alienation or destruction, and one who had this power for a moment gained the complete control. We have a perfect instance of the survival of this doctrine in the modern law on consumable articles. If a cellar of wine is bequeathed to A for life or for a year, he has the absolute interest, for there is no restraint on his power to drink or waste it.

But although property in chattels was always absolute, the use and occupation of them might be given to another than the one who had the property. Such gifts were generally for years or at will; they probably could not be given to a man and those succeeding him on his death.[3]

Could there be a bailment of goods giving the bailee the use and occupation of them for life? There was certainly no principle of law against a bailment for life, and in the first case that has yet been discovered on the question, the validity of such a bailment is distinctly recognized. In the Year Book of 37 Henry VI. 30 (1459), a testator made A and B his executors, and bequeathed a graile or mass-book to B to have and use for the term of his life, and after his death the remainder to A in the same manner for the term of his life, and after his death the remainder to the parishioners of a church forever. The Court of Common Pleas held that the property was "not in the devisees, for they will have only the occupation and 'manurance' for term of their two lives and so no property in them." Bro. Ab. Devise, 13, under this case says: —

[1] 3 HARV. LAW REV. 315.

[2] Y. B. 37 Hen. VI. 30.

[3] See, however, Anon., Owen, 33.

"In the time of Henry VIII. and Edward VI., this is good law that the occupation can so remain; but if the thing itself was devised to one the remainder is void, for a gift or devise of a chattel for an hour is forever, and the donee or devisee can give, sell, and dispose of it, and the remainder dependent on it is void, which note for it is '*valde bone diversitie.*'"[1]

That is: no legal property could be created in a chattel personal other than an absolute interest, but by the bailment of such a chattel to A the use or occupation might be given to A for life, and although A thereby acquired no property, he yet gained a right of possession.

The doctrine as then held is set forth in a decision of the Court of Common Pleas:—

"A prohibition was prayed unto the Council of the Marches of Wales, and the case was thus: A man being possessed of certain goods, devised them by his will unto his wife for her life, and after her decease to J. S., and died. J. S. in the life of the wife did commence suit in the Court of Equity, there to secure his interest in remainder, and thereupon this prohibition was prayed. And the Justices, viz.: Banks, Chief Justice, Crawley, Foster (Reeve being absent), upon consideration of the point before them, did grant a prohibition, and the reason was because the devise in the remainder of goods was void, and therefore no remedy in equity, for *Æquitas sequitur legem.* And the Chief Justice took the difference as in 37 H. 6. 30, Br. Devise, 13, and Com. Welkden & Elkington's Case, betwixt the devise of the use and occupation of goods, and the devise of goods themselves. For where the goods themselves are devised, there can be no remainder over; otherwise, where the use or occupation only is devised. It is true that heirlooms shall descend, but that is by custom and continuance of them, and also it is true that the devise of the use and occupation of land is a devise of the land itself but not so in case of goods, for one may have the occupation of the goods and another the interest, and so it is where a man pawns goods and the like. For which cause the Court all agreed that a prohibition should be awarded."[2]

But by a series of decisions in the seventeenth century the severity of this distinction was relaxed, and it was held that if a chattel personal be bequeathed to A for life and on A's death to B, the bequest to A will be construed as a bequest of only the use and occupation to him, that he will have the possession, but that the property will still be in B.[3]

[1] See Welcden *v.* Elkington, Dyer, 358 b, 359 a; Plowd. 519, 521, 522; Paramour *v.* Yardley, Plowd. 539, 542.

[2] Anon., March 106 (1641).

[3] Vachel *v.* Vachel, 1 Ch. Cas. 129 (1669); Catchmay *v.* Nicholas, Cas. temp.

And it is now settled in England that if a chattel personal is bequeathed to A for life, and on his death to B, B has a legal property interest.

It seems to be the common notion in England that a legal interest in chattels personal after a gift of them to another for his life can be created only by will, and not by a deed or other instrument operating *inter vivos*, and consequently, when it is desirable to make such limitations, the legal title is vested in trustees.[1]

A court may lend itself to construe a gift of a chattel for life as a gift of the use of the chattel for life, with greater ease in a will than in a deed, although this seems undesirable; but where the gift by deed is of the use and occupation of a chattel to A for his life and on his death the chattel to belong to B, there appears to be no reason why the gift should not take effect according to its terms. Undoubtedly, as has been said, the idea seems to prevail among the profession in England that the gift by deed to B would be void, but there is, it is believed, no decision or authoritative *dictum* to that effect, and Blackstone's authority is flat to the contrary. He says,[2] "If a man either by deed or will limits his books or furniture to A for life, with remainder over to B, this remainder is good."

And, as we shall see, Blackstone's opinion, which I submit is sound on principle, has been all but universally adopted in America.

The theory that if a chattel personal is bequeathed to A for life and on his death to B, A has the use and occupation, and B the immediate property, subject only to such use and occupation in A, seems to be the doctrine of the cases cited. This is clearly the doctrine in the case of the Grail and both the cases from Plowden, as the passages cited above show. So in Vachel *v.* Vachel,[3] where certain "rarities" were given to Rebecca Vachel for life and on her death to remain to the use of Thomas Vachel, Lord Keeper Bridgman held that Rebecca "ought only to have the use of the said rarities during her life only, and [Thomas] is to have the same after her death."

In Hyde *v.* Parrat,[4] Lord Keeper Somers, "on the strength and

Finch, 116 (1673); Smith *v.* Clever, 2 Vern. 38, 59 (1688); Shirley *v.* Ferrers, 1 P. Wms. 6, note (1690); Clarges *v.* Albemarle, 2 Vern. 245 (1691); Anon., Freem. Ch. 206 (1695); Hyde *v.* Parrat, 1 P. Wms. 1; 2 Vern. 331 (1691); Tissen *v.* Tissen, 1 P. Wms. 500 (1718). See Randall *v.* Russell, 3 Mer. 190, 195; Hoare *v.* Parker, 2 T. R. 376; Gray, Perp. § 84.

[1] Williams, Personal Property (15th ed.), 306 *et seq.*

[2] 2 Bl. Com. 398. [3] 1 Ch. Cas. 129. [4] 1 P. Wms. 1, 6.

authority of the late precedents, which had followed the civil and canon laws, in construing the *use* of the thing, and not the thing itself to pass, where the first devise is for a limited time, in order the better to comply with the intention of the testator, allowed the devise over to be good."

So in Tissen *v.* Tissen.[1] "Anciently the notions were that a personal thing given to one for life, or even for a day, was a gift forever, and would not bear a limitation over; but the construction has since been that such devise passes only the use and profits and not the thing itself, and so it is made good that way." And in Randall *v.* Russell,[2] "A gift for life of a chattel is now construed to be a gift of the usufruct only."

But although there seems to have been no judicial authority for holding that one to whom the use and occupation of a chattel personal has been bequeathed has the absolute property at Common Law, yet undoubtedly, of late years, English text writers have said that upon the bequest of a chattel personal to A for life and on his death to B, A takes the absolute property, and B has not a vested interest but an executory bequest.[3] This has been the common view. I adopted it in my book on the Rule against Perpetuities.[4]

There can be no doubt, I think, that *this notion arose from overlooking the distinction between chattels real and personal. There is a legal presumption that a life estate is larger than any term for years, but there is no legal presumption that an interest for life in a picture will last longer than the picture itself.* And, further, there can be no bailment of land, while there can be bailment of a chattel.

I have succeeded in finding but one case in which this comparatively modern doctrine has received judicial recognition in England. *Re* Tritton, *ex parte* Singleton,[5] was a case in bankruptcy before Wells, J. A testator gave to his wife "the right of possession and enjoyment of all my pictures during her life (if she shall so desire), and subject as aforesaid I give and bequeath all my said pictures to and for my son H. J. Tritton, for his own absolute use and benefit." The widow was still alive, the son assigned his interest under his father's will, and subsequently became bankrupt. The trustee in bankruptcy contended that the assignment was a bill of sale, and void as not having been registered.

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[1] 1 P. Wms. 500.
[2] 3 Mer. 190, 195.
[3] F. C. R. 402, Butler's note; Lewis, Perp. 97; Wms. Pers. Prop. (15th ed.) 295.
[4] § 90.
[5] Reported 61 L. T. 130, and more fully in 6 Morell, 250.

The judge held that the son's interest was a *chose in action* which was excepted from the Bills of Sale Acts. He said: —

"It is clear upon the authorities that there cannot be life estates and remainders of personal chattels. The interest which Mrs. Tritton took was definite, and it came first, and entitled her to the enjoyment and possession of these things — that was, to the property in them during her lifetime. The son's interest was an executory bequest, which created no present or vested interest, and which, if the mother survived him, would never come into operation."

None of the authorities which appear in either of the reports to have been cited by the counsel bear upon the matter, except the passage in 1 Jarm. Wills (4th ed.), 879.

Having stated the old and modern theory with regard to chattels personal, let us now consider the nature of present and future interests in such chattels in the light of those theories. And, as we did with chattels real, let us take up those cases, *first*, where the first gift is to A and his executors; *secondly*, where the first gift is to A for years; *thirdly*, where the first gift is to A for life.

I. A chattel personal is bequeathed to A and his executors. A has undoubtedly here not only the possession but the property. As words of limitation are unnecessary to give an absolute interest in personalty, a gift to A is equivalent to a gift to A and his executors, unless the context shows that it is intended to give a less interest.

If, then, after a bequest to A and his executors there is a future gift over to B, such gift must be an executory bequest, and cannot be considered a vested interest until there is a right to immediate possession.

The consideration of the two theories we have been discussing does not affect this class of cases.

If there is no present bequest, but only a future bequest, then if no present gift is raised by implication, the property vests immediately in the next of kin or residuary legatees, and the future bequest is an executory bequest.

II. A gift to A for years. Here is a bailment to A. A has the possession, the use and occupation, but not the property. If there is a gift to B subject to this bailment, B has the property and has a vested interest. If there is no such gift to B, then the property remains in the donor or his next of kin or residuary legatees, and he or they have a vested interest. In this class of cases, also, the adoption of the one or the other of the theories is imma-

terial. I am unaware that any one at the present day would say (unless in the case of consumable chattels) that A in a case of this kind had the property and B an executory interest.

III. A bequest of a chattel personal to A for life, and on his death to B. It is in this class of cases that the adoption of the one or of the other theory becomes significant. According to the old theory, A has the possession, the use and occupation only, and B has the property and an immediate vested interest. According to the modern English doctrine, A has the absolute legal property in the chattel, with an executory bequest over to B, which becomes a vested interest only upon the death of A.[1]

Whether B's interest be an executory bequest, or whether it be a vested interest, which may properly be called a *quasi* vested remainder, it is a legal interest, and beyond the control of A, so that it is for most questions immaterial which theory is adopted, and this explains why the law has remained so long in an undecided condition.

But, as in the case of chattels real, there are two questions in which the character of the future interest in chattels personal determines the decision :—

First. Suppose a chattel personal is bequeathed to A for life, and on his death to A's eldest son for life, and on the death of such eldest son to A's other children and their respective executors as tenants in common. A is at present a bachelor.

Here, on the old theory, A and his eldest son have the possession, use, and occupation one after the other, and the other children, as fast as they are born, acquire vested interests in the property. The bequest to A's younger children is good, for they must all be born and their interests vest in A's lifetime, and consequently the gift to them will not be too remote.

But, on the modern English theory, A and A's eldest son will each hold the property in succession, and the younger children will have an executory bequest which will not vest until they have

[1] Suppose the use and occupation of a chattel personal is bequeathed to A for his life, and on his death, if he leaves children, the chattel to go to them, but if he leaves no children, to go to B. In this case, the interest of the children and of B are both contingent, none of them have a vested interest. On the old theory, during the lifetime of A has any one the property of the chattel? In the case of such a limitation of realty, it has been held by many learned writers that the fee is in the testator's heirs. If this be the correct view, as it probably is (see Gray, Perp. § 11), it rests upon the idea that the fee must be somewhere; but there seems no technical necessity that every chattel personal should always have an owner, and therefore it is best and most natural to say that during the life of A no one has property in the chattel.

an immediate right to possession; this will not be till the death of A's eldest son, which may be more than twenty-one years after the death of A, whose was the only life in being at the testator's death. Consequently the bequest to A's younger children is void as violating the Rule against Perpetuities. Mr. Marsden, in his Treatise on the Rule against Perpetuities,[1] adopts this view.

So far as authority goes, the English decisions are all in favor of the former view.[2] In each of them the ultimate interest in personalty after the death of an unborn person was considered vested and not too remote. In Evans *v.* Walker the interest was legal; in the other two it was equitable. But, in considering whether a limitation is vested or not, the same rules apply in equity as at law.

Second. Suppose chattels personal are bequeathed to A for life, and there is no gift over.

Here, according to the old theory, there is a reversionary vested interest in the next of kin or residuary legatee of the testator, or rather in the executor of the testator, and a right to immediate possession arises on the death of A.

According to the modern English theory, A has the absolute property, and there being no executory bequest, there is nothing to take the property from him, and on his death the chattels go to the executor of A, and not to the executor of the testator.

The only English case which touches this question is Eyres *v.* Faulkland,[3] in which the point was decided, as to a term of years, in favor of the testator's executor, *vide supra.*

Hitherto I have confined myself to the English law as to chattels personal; let us now take up the law in the United States.

I. We have seen that although the English law recognizes the validity of a future bequest by will of a chattel personal, the modern English conveyancers have said that a future limitation of a chattel personal cannot be created by deed.

The decisions in North Carolina have adopted this latter view, and do not allow any future limitations of chattels personal to be created by a conveyance *inter vivos.*[4]

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[1] Pp. 43, 44.

[2] Routledge *v.* Dorrill, 2 Ves. Jr. 357, 366, 367; Evans *v.* Walker, 3 Ch. D. 211; *Re* Roberts, 19 Ch. D. 520.

[3] 1 Salk. 231.

[4] Cutlar *v.* Spiller, 2 Hayw. 130; Gilbert *v.* Murdock, Ib. 182; Dowd *v.* Montgomery, 2 Car. Law Rep. 100; Graham *v.* Graham, 2 Hawks, 322; Foscue *v.* Foscue, 3 Hawks, 538; Sutton *v.* Hollowell, 2 Dev. 185; Smith *v.* Tucker, Ib. 541; Morrow *v.* Williams, 3 Dev. 263; Hunt *v.* Davis, 3 Dev. & B. 42; Foscue *v.* Foscue, 2 Ired.

In 1823 a statute was passed, changing the law as to slaves; but as to all other chattels the law remained, and remains the same as before.[1]

But in the other states, so far as the question has yet arisen, the same future limitations of chattels personal that can be created by will can be created also *inter vivos*.[2]

It may therefore be said to be the general American law that any future limitation of chattels personal which can be made by will can be made also by deed.

It is submitted that the American law is a return to the sounder doctrine which was laid down by Blackstone.[3] Future interests in personalty owe nothing to statutes; they are what they are by the Common Law, and any distinction between the right to create them by deed and the right to create them by will seems purely arbitrary. Undoubtedly certain interests can be created under wills by language which would not have the same effect if used in deeds; but the present is not a question of construction or of the use of words, but whether it is possible, by any words, to make a future limitation of a personal chattel, and there is no reason why this power, if granted to a man on his death, should be denied to him in his lifetime.

II. A notion which has found expression in a few American cases, viz., that after a gift or bequest of the absolute property

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Eq. 321. The case of Duncan *v.* Self, 1 Murph. 466, *contra*, is overruled; and Timms *v.* Potter, 1 Hayw. 234, apparently *contra*, is explained in Gilbert *v.* Murdock, *ubi sup.* See Vass *v.* Hicks, 3 Murph. 493; Hughes *v.* Cannon, 2 Humph. 589.

[1] Lance *v.* Lance, 5 Jones, 413; Dail *v.* Jones, 85 N. Car. 221.

[2] Security Co. *v.* Hardenburgh, 53 Conn. 169; Tucker *v.* Stevens, 4 Des. 532; Hill *v.* Hill, Dudl. Eq. 71; McCall *v.* Lewis, 1 Strob. 442; Dukes *v.* Dyches, 2 Strob. Eq. 353, note; Dawson *v.* Dawson, Rice, Eq. 243, 261; Jaggers *v.* Estes, 2 Strob. Eq. 343, 378, 397; Nix *v.* Ray, 5 Rich. 423 (Cooper *v.* Cooper, Brevard MSS. Rep.; 1 Rice, South Car. Dig. 207; Vernon *v.* Inabnit, 2 Brev. 411, and the *dictum* in Ingram *v.* Porter, 4 McCord, 198, *contra*, are overruled); Robinson *v.* Schly, 6 Ga. 515; McGlawn *v.* McGlawn, 17 Ga. 234; Sharman *v.* Jackson, 30 Ga. 224; Price *v.* Price, 5 Ala. 578; Adams *v.* Broughton, 13 Ala. 731; Williamson *v.* Mason, 23 Ala. 488; Horn *v.* Gartman, 1 Fla. 73; Keen *v.* Macey, 3 Bibb, 39; Banks *v.* Marksberry, 3 Lit. 275; Caines *v.* Marley, 2 Verg. 582; Johnson *v.* Mitchell, 1 Humph. 168, 173; Gullett *v.* Lamberton, 6 Ark. 109.

See Sampson *v.* Randall, 72 Me. 109, 112; Fuller *v.* Fuller, 84 Me. 475, 481; Hope *v.* Hutchins, 9 G. & J. 77; Culbreth *v.* Smith, 69 Md. 450; Bradley *v.* Mosby, 3 Call, 50; Powell *v.* Brown, 1 Bail. 100; Welch *v.* Kinard, Speers Eq. 256, 262; Henderson *v.* Kinard, 29 So. Car. 15; Kirkpatrick *v.* Davidson, 2 Ga. 297, 301; Owen *v.* Cooper, 46 Ind. 524; McCall *v.* Lee, 120 Ill. 261; Harris *v.* McLaran, 30 Miss. 533, 568, 569; Aikin *v.* Smith, 1 Sneed, 304; Lyde *v.* Taylor, 17 Ala. 270; Jones *v.* Hoskins, 18 Ala. 489.

[3] 2 Bl. Com. 398.

in a chattel personal, there can be no executory limitation over, is of course totally erroneous.

It had its origin in Paterson *v.* Ellis,[1] where a gift over of personalty was held to be upon an indefinite failure of issue, and therefore too remote. Several members of the court, however, said that after a bequest of personalty, absolute in its terms, there could be no executory bequest. But such an idea has been entirely repudiated in New York, the courts pointing out that it arose from confounding the case of an executory bequest upon death without issue, or some other contingency not dependent upon the mere will of the first taker, which executory bequest is unquestionably good, with the case of an executory bequest over upon the failure of the first taker to dispose of his interest by deed, or by deed or will, which latter form of executory bequest had been held in New York to be bad.[2]

The Supreme Court of Arkansas has followed the erroneous *dicta* in Paterson *v.* Ellis.[3]

In the case of Wilson *v.* Cockrill,[4] it was decided that if an absolute gift of a chattel personal was made by deed, an executory limitation over was void. The court declined to consider whether it would have been good if created by will. This is believed to be the only American case, outside of North Carolina, in which any distinction between the validity of an executory limitation made by deed and of one made by will is suggested. Perhaps also Betty *v.* Moore,[5] should be added.

The cases in the United States in which executory limitations after absolute gifts or bequests of chattels personal have been allowed are very numerous.[6]

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[1] 11 Wend. 259.

[2] Norris *v.* Beyea, 13 N. Y. 273; Tyson *v.* Blake, 22 N. Y. 528. See Gray, Restraints on Alienation, §§ 65 *et seqq.*

[3] Moody *v.* Walker, 3 Ark. 147; Maulding *v.* Scott, 13 Ark. 88; Scull *v.* Vaugine, 15 Ark. 695; Slaughter *v.* Slaughter, 23 Ark. 356; Robinson *v.* Bishop, 23 Ark. 378. But *cf.* Bunch *v.* Nicks, 50 Ark. 367, 376.

[4] 8 Mo. 1.

[5] 1 Dana, 235.

[6] Drury *v.* Grace, 2 H. & J. 356; Moffat *v.* Strong, 10 Johns. 12, 18; Deihl *v.* King, 6 S. & R. 29; Raborg *v.* Hammond, 2 H. & G. 42; Dashiel *v.* Dashiel, 2 H. & G. 127; Biscoe *v.* Biscoe, 6 G. & J. 232; Jones *v.* Sothoron, 10 G. & J. 187; Clagett *v.* Worthington, 3 Gill, 83, 92; Edelen *v.* Middleton, 9 Gill, 161; Woodland *v.* Wallis, 6 Md. 151; Budd *v.* Posey, 22 Md. 48; Waddy *v.* Sturman, Jeff. 5; Higgenbotham *v.* Rucker, 2 Call, 313; Royall *v.* Eppes, 2 Munf. 479; Timberlake *v.* Graves, 6 Munf. 174; Threadgill *v.* Ingram, 1 Ired. 577; Braswell *v.* Morehead, Busb. Eq. 26; Keating *v.* Reynolds, 1 Bay, 80; Henry *v.* Means, 2 Hill (S. C.), 328; Hill *v.* Hill, 2 Dudl. Eq. 71, 83, 84; Rogers *v.* Randall, 2 Speers, 38; Marshall *v.* Rives, 8 Rich. 85;

III. To come now to the case where a chattel personal is given to A for life and on his death to B. The gift over to B is universally recognized as valid throughout the United States when it is created by will, and also (except in North Carolina) when it is created *inter vivos*. And not only is it a valid interest, but it is a valid *legal* interest which has been repeatedly the subject of an action at law.[1]

But is this limitation to B a vested interest in the nature of a remainder, subject to the right of A to the possession of the chattel for life; or is A to be regarded as having the absolute property, with an executory bequest over to B? In other words, do the American courts apply the old doctrine which prevailed in England down to the middle of the last century, or have they adopted the theory of the more modern conveyancers? It is impossible to determine this from the names attributed in the reports to the interest of B, for there is no uniform practice; sometimes it is called a remainder, sometimes an executory limitation: to determine its nature, we must have recourse to the two test cases which we have applied in the case of the English Law.

First. Suppose a chattel personal is bequeathed to A for life, on A's death to his eldest son for life, and on the death of such eldest son then to the other children of A. A is a bachelor at the testator's death. Is the bequest to the younger children of A a good vested *quasi* remainder, or is it an executory bequest void for remoteness?

We have seen that all the English authority is in favor of the former view, so is the only American case I have found on the point.[2]

Second. Suppose a chattel personal is bequeathed to A for life, and there is no gift over, does the chattel after A's death go to the executor of the testator or to the executor of A?

We have seen that there seems to be but one English authority bearing on this question, but there is no lack of American authority.

In Delaware, if a chattel is bequeathed to A for life, A takes the absolute property.[3]

Henderson *v.* Kinard, 29 So. Car. 15; Robert *v.* West, 15 Ga. 122; Harris *v.* Smith, 16 Ga. 545; Moore *v.* Howe, 4 T. B. Monr. 199.

[1] This recognition of the validity of such a gift when created by deed was recognized in Virginia in an early series of cases beginning in 1736. Edmonds *v.* Hughes, Jeff. 2; Waddy *v.* Sturman, Ib. 5; Jones *v.* Langhorn, Ib. 37; Spicer *v.* Pope, Ib. 43.

[2] Loring *v.* Blake, 98 Mass. 253.

[3] State *v.* Savin, 4 Harring. 56, note; Dericksen *v.* Garden, 5 Del. Ch. 323.

In Merkel's Appeal,[1] a testator gave to his wife personal property "to her full ownership, so long as she doth live." The Supreme Court of Pennsylvania said: "It is a gift for life, without any limitation over, and without the intervention of a trustee. There is a line of decisions in this state which hold that such a bequest is absolute." The court cites several cases as supporting this proposition, but the only one which tends to do so is Brownfield's Estate.[2] The proposition is, however, repeated in Drennan's Appeal.[3] It seems rather to be a rule of construction than to be based upon any peculiar doctrine as to the nature of a life interest in personalty. It is justly criticised by Penrose, J., in Kane's Estate.[4]

But the great weight of authority is in favor of a reversionary interest.[5]

SUMMARY.

I. *Chattels real.*

A. There can be an estate for years (sub-lease) in a chattel real.

B. There can be no estate for life in a chattel real, because a life estate is larger than any term.

C. A gift for life of a chattel real passes the absolute interest.

D. Therefore, after a gift for life of a chattel real, there can be no vested interest or *quasi* remainder; any future interest after such gift can be good only as an executory limitation.

E. Such an executory limitation can be created by will.

F. In America (except in North Carolina) it can probably be created *inter vivos*. But there is no decision exactly in point.

G. In England it is said that it cannot be created *inter vivos*, but there is no decision to that effect.

H. The American doctrine is the better, as there is no rational distinction in this respect between deeds and wills, and no judicial authority in favor of such a distinction.

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[1] 109 Pa. St. 235.

[2] 8 Watts, 465.

[3] 20 W. N. C. (Pa.) 522.

[4] 6 Pa. Dist. C. 553; 19 Pa. C. C. 589. See London *v.* Turner, 11 Leigh, 403, 412, 413.

[5] Brown *v.* Kelsey, 2 Cush. 243, 248, 249; Hoes *v.* Hoesen, 1 Comst. 120; Bartlett *v.* Patton, 33 W. Va. 71; Anon., 2 Hayw. 161; James *v.* Masters, 3 Murphy, 110; Black *v.* Ray, 1 Dev. & B. 334; Creswell *v.* Emberson, 6 Ired. Eq. 151 (see Newell *v.* Taylor, 3 Jones Eq. 374); Geiger *v.* Brown, 4 McCord, 418, 427, S. C., 2 Strob. Eq. 359, note; Haralson *v.* Redd, 15 Ga. 148; Booth *v.* Terrell, 16 Ga. 20; McCutchin *v.* Price, 3 Hayw. 211; Vannerson *v.* Culbertson, 10 Sm. & M. 150; Harris *v.* McLaran, 30 Miss. 533; Keyes on Chattels, §§ 276, 277.

I. If a chattel real is bequeathed to A, a living person, and his executors, after a bequest for life to an unborn person, such gift to A, being an executory limitation, should on theory be held void for remoteness; but there is no authority on this point.

J. If a chattel real is bequeathed to A for life, with no limitation over, A takes the whole term, and there being no limitation over, it should on theory go, on A's death, to his executor; but the only authority is *contra.*

II. *Chattels personal.*

A. A chattel personal can be bailed for years.

B. The use and occupation of a chattel can be given to A for life, the property remaining in the donor, and a gift of a chattel personal for life is construed to be a gift of the use and occupation.

C. If a chattel personal is given to A for life, and on his death to B, B takes a legal interest.

D. This can be done by will.

E. And also, in the United States (except in North Carolina), *inter vivos.*

F. In England the modern text writers say this cannot be done *inter vivos,* but there is no judicial authority to that effect.

G. The American doctrine is the better, for there is no rational distinction in this respect between deeds and wills.

H. If a chattel personal is bequeathed to A for life, and on his death to B, A has the use and occupation, and B a vested interest, a *quasi* remainder. This is the doctrine of the older cases.

I. Modern English text writers say that A has the property in the chattel, and the bequest to B is an executory limitation.

J. The older doctrine is the sounder. There is no reason why the use and occupation of a chattel personal should not be given for life; the doctrine I. (B), *supra,* as to chattels real, has no application to chattels personal; there is no legal presumption that a man will live longer than a picture or table will last.

K. Suppose a chattel personal is bequeathed to an unborn person for life, and on his death to A and his executors. If the gift to A is vested (according to the old theory), then it is not too remote; if the gift to A is executory, then it is void for remoteness. All the authorities, American and English, hold that the gift to A is not too remote.

L. Suppose a chattel personal is given to A for life, with no limitation over. Then, on the old theory, upon A's death there is a reversion to the donor or his executors. On the modern Eng-

lish theory A takes the whole property in the chattel, and there being no limitation over, it should go on A's death to his executors. There is no English authority directly on the point. The weight of American authority is in favor of the reversion.

As, therefore, there is (1) no reason why the use and occupation of a chattel personal should not be given for life;[1] (2) as the judicial authorities proceed on the theory that the gift for life of a chattel personal is a gift of the use and possession only; (3) as there is no judicial decision the other way,[2] but only the *cantilena* of modern text writers, based on the mistaken analogy of chattels real; (4) as on one of the test questions all the authority, English and American, and on the other the great weight of authority is in favor of the old view; and (5) as it is very desirable that on such matters there should be no difference between real and personal property, the statement may perhaps be ventured that in the United States we have stayed faithful to the old law, and that after a gift of a chattel personal for life there may be a vested interest in remainder or reversion, and not merely an executory limitation.

As to chattels real, it would certainly be desirable that in them, also, the law should recognize the possibility of interests for life, and there is no reason in the nature of chattels real why it should not. On one of the two test questions there appears to be no authority either way, and on the other the sole decision is in favor of such recognition. The only obstacle is the notion that as an estate for life is longer than any term for years, a grant for life of a chattel real must pass all that there is to pass, *i. e.*, the whole term.

Would it be too bold a step on the part of the courts to drop this bit of antiquated scholasticism and put chattels real in the same position as chattels personal?

John Chipman Gray.

NOTE. — A main motive in writing this article has been the hope that it may lead to a fuller examination of the authorities than has yet been had. The cases on future interest in personalty are so badly digested that one comes upon many of them only by accident. My learned friend, Professor Nathan Abbott, of the Law School in Stanford University, has given much attention to the subject, and I am indebted to him for kindly communicating to me the result of his exhaustive researches in the reports of several of the states. It is much to be desired that Professor Abbott should complete, classify, and publish his collections.

[1] I have in general tried to avoid the expression "bailment for life," fearing it might shock some ears, although I myself have no objection to it.

[2] *Re* Tritton, 61 L. T. 301, is possibly an exception.